

WRITTEN MOTION TO SUPPRESS EVIDENCE/STATEMENT(S) FOR LACK OF PROBABLE CAUSE TO ARREST FOR A CLASS A OFFENSE(S)

Use the attached form motion if law enforcement arrested you for a Class A offense that was not committed in the presence of law enforcement without probable cause and then law enforcement searched and seized items from you or you made incriminating statements to law enforcement to be used as evidence in violation of your constitutional statutory rights. Only use the attached form motion if there are grounds to suppress the evidence. Please do not file this motion if you have no basis in fact to do so. This means you must have some evidence that there are grounds to dismiss the evidence. The Court does not take kindly to entertaining motions that are considered frivolous. Frivolous means there is no evidence or facts to back up your claims that the charges should be dismissed. If you file a frivolous motion, the Court may not take any other motions you file serious even if they may have merit.

An officer may also arrest any person if the officer has probable cause to believe that a Class A offense has been committed (the most serious offenses in the Tribal criminal code) and the person committed the Class A offense outside the presence of the officer. For example, a person commits the crime of burglary, a Class A offense in the Tribal Code, outside the presence of the officer. Several witnesses tell the officer that John Doe committed the burglary and described John Doe. The officer located John Doe and he fit the description of the witnesses. The officer could arrest John Doe for burglary, a Class A offense based on probable cause even though the crime was not committed in the presence of the officer. If the officer lacked probable cause to arrest you and only arrested you on hunch, you should file a motion to suppress any statements or evidence derived from the illegal arrest for lack of probable cause. For example, a person commits the crime of burglary, a Class A offense in the Tribal Code, outside the presence of the officer. The officer arrested John Doe before for a burglary charge so based on the prior arrest for burglary the officer has a hunch that John Doe committed the current burglary. With no other evidence the officer arrests the John Doe for burglary. If you were arrested for a Class A offense committed outside the presence of the arresting officer and the officer lacked probable cause to believe you committed the offense then you should file a Motion to Suppress Evidence for Lack of Probable Cause to Arrest for a Class A Offense.

The Tribe's Constitution prohibits the government of the Tribe from violating the right of the people to be secure in the privacy of their own persons, houses, papers, vehicles, and effects against unreasonable searches and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation signed by a judge, and particularly describing the place, person, house, papers, vehicle, or effects to be searched, the object and scope of such search, and the thing to be seized, and any search and seizure taken in violation of this provision shall be excluded.

The Indian Civil Rights Act provides that no Indian tribe in exercising the powers of self-government shall violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

Law enforcement cannot arrest and search a person on a whim. They need probable cause before they can arrest and search a person.

The unlawful arrest for lack of probable cause constitutes an unreasonable seizure of your person and an unreasonable seizure of any evidence or statements obtained as a result of the unlawful arrest under the Tribal Constitution and the Indian Civil Rights Act.

If the Court finds your motion has merit it will schedule a hearing. The Tribe should have the burden of proving that the evidence is admissible. You will have the chance to show the Court the evidence was seized in violation of your constitutional rights with evidence and arguments to the Court.

INSTRUCTIONS FOR FILLING OUT THE FORM. To fill out the attached form follow these instructions. The numbers to each instruction below is the number on the blank line on the form where the information for that number needs to be inserted on the form.

Instructions for filling out the motion:

(1) on this line insert your name. If you are charged with a crime(s) you are the defendant.

(2) on this line insert the date you were arrested.

(3) on this line itemize the charges against as reflected in each count of the Complaint.

(4) on this line insert the date you sign the motion

(5) on this line sign the motion

Note: Your motion must be signed and dated before the Clerk can accept it for filing and service

(6) on this line date the day you mailed a copy of the motion to the RST Prosecutor's office. You are required to serve a copy of the motion on the RST Prosecutor's office.

(7) on this line sign your name to certify you mailed a copy of the motion on date you inserted on line (6).

NOTE: You must file your motion with the RST Clerk of the Criminal Court and mail a copy to Tribe's Prosecutor's office.

ROSEBUD SIOUX TRIBAL COURT)
ROSEBUD SIOUX RESERVATION) SS
ROSEBUD, SOUTH DAKOTA)

IN CRIMINAL COURT

Rosebud Sioux Tribe, Plaintiff, v. (1) _____, Defendant.	DOCKET #CR _____ MOTION TO SUPPRESS EVIDENCE/STATEMENT(S) FOR LACK OF PROBABLE CAUSE TO ARREST FOR A CLASS A OFFENSE(S)
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Comes now, the above-named Defendant who moves this Honorable Court for an Order suppressing any and all evidence seized from the defendant prior to and after the defendant's arrest done in violation of the Rosebud Sioux Tribe Constitution and the Indian Civil Rights Act; for the following reasons and upon the following grounds:

1. That on (2) _____ I was arrested and charged with (3) _____.
2. That after my arrest, law enforcement searched and seized evidence the Tribe intends to use against me at the trial herein.
3. After my arrest, I made statements to law enforcement the Tribe intends to use against me at the trial herein.
4. Under Title Seven Section IV, Subsection B.6. of the Rules of Criminal Procedure of the Tribal Law and Order Code an officer may arrest any person if the officer has probable cause to believe that a Class A offense has been committed (the most serious offenses in the Tribal criminal code) and the person committed the Class A offense outside the presence of the officer.
4. Article X Section 1(c) of the RST Constitution prohibits the government of the Tribe from violating the right of the people to be secure in the privacy of their own persons, houses, papers, vehicles, and effects against unreasonable searches and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation signed by a judge, and particularly describing the place, person, house, papers, vehicle, or effects to be searched, the object and scope of such search, and the thing to be seized, and any search and seizure taken in violation of this provision shall be excluded.
5. 25 USC Section 1302 (a)(2) of the Indian Civil Rights Act provides that no Indian tribe in exercising the powers of self-government shall violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.
6. Article X Section 1(f) of the RST Constitution and 25 USC Section 1302 (a)(8) of the Indian

Civil Rights Act both prohibit the Tribe from denying any person of liberty without due process of law.

7. That at the time of my arrest, law enforcement lacked probable cause to arrest me constituting an unreasonable seizure and arrest of me.

8. Tribal law enforcement violated my rights to against unreasonable search and seizure.

9. By arresting me without probable cause any seized items of evidence or statements made by me to law enforcement, the Tribe violated my constitutional rights and my due process rights.

10. The unlawful arrest for lack of probable cause constitutes an unreasonable seizure of my person and an unreasonable seizure of any evidence or statements obtained as a result of the unlawful arrest under the Tribal Constitution and the Indian Civil Rights Act.

WHEREFORE, the defendant requests that the Court issue its Order suppressing and excluding as evidence any and all evidence and statements made by me.

(4) _____

(5) _____
Defendant

CERTIFICATE OF SERVICE

The defendant hereby certifies that on (6) _____ I did serve a true and correct copy of the Document in the above matter by mail on the Rosebud Sioux Tribal Prosecutor's Office at P.O. Box 500, Rosebud, SD 57570.

(7) _____
Defendant